

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

1700 K STREET
SACRAMENTO, CA 95814-4037
TDD (916) 445-1942



February 23, 2006

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**Amendments to Narcotic Treatment Program (NTP) Regulations Contained in
Chapter 4, Division 4, Title 9, California Code of Regulations (CCR)****NTP LICENSING FEES****Notice of Additional Change**

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs (ADP) proposes to amend the proposed text of Sections 10056 and 10057, Title 9, CCR, that were originally made available for public comment on June 17, 2005. A copy of the complete text of the originally proposed regulations is enclosed, with additional changes shown in *Italic* type.

Any interested person or his authorized representative may submit written comments on the proposed additional changes. Please limit your comments only to the additional changes shown in *Italic* type. **The written comment period closes at 5 p.m. on March 13, 2006.** Please submit any written comments before that time because the Department cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (915) 323-5873 or e-mail at www.mconway@adp.ca.gov.

ADP will fully consider any comments submitted. However in order for the proposed regulations to take effect by the start of the new fiscal year on July 1, 2006, the Department may need to make any additional changes requested in a subsequent regulatory action.



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DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Title 9, California Code of Regulations, Division 4,
Chapter 4, Subchapter 2, Article 1
Adopt Sections 10056 and 10057

Narcotic Treatment Program Licensing Fees

Proposed Text of Additional Changes

§ 10056. Licensure Fees.

DELETE ORIGINALLY PROPOSED TEXT SHOWN IN STRIKEOUT/UNDERLINE
AND REPLACE WITH NEW LANGUAGE SHOWN IN ITALIC UNDERLINE

- (a) ~~The Department shall assess annual licensing fees to cover the cost of licensing all narcotic treatment programs (NTPs) except those which are operating under the auspices of a governmental entity.~~
- (b) ~~The Department shall assess the following types of licensing fees:~~
- (1) ~~An initial application fee for all programs, including components such as medication units;~~
 - (2) ~~An annual license renewal fee for all programs;~~
 - (3) ~~A slot fee for all programs, based on the patient capacity of each program;~~
 - (4) ~~A change of ownership fee for programs which have changed ownership;~~
 - (5) ~~A relocation fee for programs which have changed location;~~
 - (6) ~~A follow-up visit fee to determine if the program is in compliance with the regulations in this Chapter, following correction of a deficiency.~~
- (c) ~~The Department shall compute licensing fees for every fiscal year (i.e., July 1st through June 30th of the following calendar year.)~~
- (d) ~~The Department shall increase licensing fees by the lower of excess cost or CPI for the most recent fiscal year.~~

- (1) — “Excess cost” means the percentage by which actual cost exceeds revenue collected from NTP licensing fees. Actual cost shall include staff salaries and benefits, operating expenses, and indirect costs related to licensing narcotic treatment programs (except those operating under the auspices of a government entity).
- (2) — “CPI” means the percentage increase in the Consumer Price Index as shown in the “Consumer Price Indices for All Urban Consumers for California” for the most recent fiscal year, which is available from the Economic Research Unit of the State Department of Finance.
- (e) — To determine whether to base licensing fees on the lower of excess cost or CPI, the Department shall first determine the amount of excess cost by subtracting the total amount of revenue collected from NTP licensing fees from total actual cost.
- For example: If total actual cost equals \$1,000 and total revenue collected from NTP licensing fees equals \$900, the amount of actual cost exceeding revenue would equal \$100.
- (1) — The Department shall determine the percentage of cost exceeding revenue (i.e. excess cost) by dividing the amount of actual cost exceeding revenue for the most recent fiscal year by total actual cost.
- For example: \$100 divided by \$1,000 equals 10%.
- (2) — The Department shall compare the resulting percentage to the percentage of CPI increase over the same time period to determine which is lower.
- For example: Based on the calculations used in the example in this subsection, excess cost equals 10%, while CPI for the same fiscal year is lower at 1%. Thus, if the most recent fiscal year application fee were \$100, the Department would multiply that amount by the CPI increase of 1% to compute the current licensing fee of \$101.
- (f) — By July 30th of each year, beginning in 2006, the Department shall compute the licensing fees for the current fiscal year using the computation described in (e) of this regulation.
- (g) — By August 30th of each year, beginning in 2006, the Department shall provide written notice to every licensed narcotic treatment program of the licensing fee for the current fiscal year. The written notice shall provide the data used for computing the licensing fees. The Department shall also include such data as part of the licensing application for new narcotic treatment programs.
- (h) — The Department has not increased licensing fees since fiscal year 1994-95. The Department shall increase licensing fees beginning with fiscal year 2006-07 to cover the Department’s actual cost of licensing NTPs. Beginning with fiscal year 2006-07 the Department shall also include in the licensing fee a prorated amount

to cover the actual cost of licensing programs between 1995-96 and 2004-05.

Using the formula shown in (e) of this regulation, the Department shall calculate what the annual licensing fee should have been for each year between fiscal year 1995-96 and fiscal year 2004-05 if the Department had increased fees annually to cover the cost of licensing NTPs. The Department shall add the total cumulative increase for all years between fiscal year 1995-96 and fiscal year 2004-05. The total shall be divided into thirds and prorated over the next three (3) fiscal years in order to make up the difference, as shown below:

(1) — The licensing fee for 2006-07 shall be the total of:

(A) — The licensing fee for fiscal year 2005-06, plus

(B) — The lower of excess costs or CPI for fiscal year 2005-06, plus

(C) — One third of the total computed pursuant to (h) of this regulation.

For example: If the fiscal year 2005-06 application fee was \$100, the lower of excess cost or CPI were 1 percent or \$1, and one third of the accumulated increase were \$10, the fiscal year 2006-07 application fee would be the total of \$100, plus \$1, plus \$10, which equals \$111.

(2) — The licensing fee for 2007-08 shall be the total of:

(A) — The licensing fee for the most recent prior fiscal year (2006-07), plus

(B) — The lower of excess cost or CPI for fiscal year 2006-07, plus

(C) — One third of the total computed pursuant to (h) of this regulation.

For example: If the fiscal year 2006-07 application fee were \$200, the lower of excess cost or CPI were 1 percent or \$2, and one third of the accumulated increase were \$10, the fiscal year 2007-08 application fee would be the total of \$200, plus \$2, plus \$10 which equals \$212.

(3) — The licensing fee for 2008-09 shall be the total of:

(A) — The licensing fee for the most recent prior fiscal year (2007-08), plus

(B) — The lower of the percentage of excess cost or CPI for fiscal year 2007-08, plus

(C) — One third of the total computed pursuant to (h) of this regulation.

For example: If the fiscal year 2007-08 application fee were \$300, the

lower of excess cost or CPI were 1 percent or \$3, and one third of the accumulated increase were \$10, the fiscal year 2008-09 application fee would be the total of \$300, plus \$3, plus \$10, which equals \$313

- (4) The licensing fee for fiscal year 2009-10 and every year thereafter shall be the total of the licensing fee for the most recent prior fiscal year plus the lower of the percentage of excess cost or CPI for fiscal year 2008-09.

For example: If the fiscal year 2008-09 application fee was \$400 and the lower of excess cost or CPI were 1 percent or \$4, the fiscal year 2009-10 application fee would be the total of \$400, plus \$4, which equals \$404.

- (i) Applicants for licensure shall attach the application fee to their application for licensure. The Department shall terminate its review of the application if the applicant fails to attach the required application fee. The Department shall not refund the application fee if it denies the application.

- (ii) The licensee may pay licensing fees once annually or quarterly in arrears.

- (1) If the licensee pays the total licensing fees once annually, he/she shall submit the amount of the total licensing fees to the Department by September 30th

- (2) If the licensee pays the licensing fees in arrears, he/she shall submit one quarter of the total annual licensing fees to the Department by September 30th, December 31st, March 31st, and May 31st.

- (3) If the licensee fails to submit the licensing fees in accordance with the requirements of (i)(1) or (i)(2) immediately above, the Department shall issue a written notice of deficiency by certified mail within five (5) days of the date payment was due. The notice of deficiency shall:

(A) Notify the licensee that he/she has failed to pay licensing fees in accordance with the requirements of this regulation;

(B) Specify the amount of the licensing fee due;

(C) State the date by which the licensing fee was due;

(D) Notify the licensee that his/her license shall not be renewed unless all fees have been paid by May 31st;

(E) Notify the licensee that the Department has assessed a civil penalty in the amount of \$100 per day for each day from the date the licensing fees were due until the date the licensee pays the licensing fees; and

(F) Notify the licensee that he/she may appeal civil penalties in

accordance with Section 10057.

**NEW LANGUAGE PROPOSED AS ADDITIONAL CHANGE
IS SHOWN BELOW:**

(a) The Department shall assess a license fee to cover the cost of licensing narcotic treatment programs required to pay a licensing fee pursuant to Section 11839.7 of the Health and Safety Code.

As used in this regulation, "license fee" means:

(1) A fee for initial application for licensure (including licensure of components such as medication units); and

(2) An annual license fee, which shall include:

(A) A base annual license fee;

(B) A patient slot fee, based on the narcotic treatment program's authorized patient capacity; and

(3) A relocation fee, to be paid when the narcotic treatment program requests approval to move to another location, pursuant to Section 10035.

NECESSITY: The Department has broken down the annual license fee consistent with the amount of staff work involved in licensure. A slot fee is charged based on patient capacity because there are more files to review for a larger facility. A fee is charged for relocation because an additional site visit is required.

(b) License fees for fiscal year 2006-07 are shown below:

<u>Type of License Fee</u>	<u>Prior Year License Fees</u>	<u>Percent of Increase (based on CPI)</u>	<u>New License Fees for FY 2006-2007</u>	<u>Number of Estimated Transactions for FY 2006-2007 (based on FY 2004-2005 actual)</u>	<u>Total Statewide License Fees for FY 2006-2007</u>
<u>Initial Application for Licensure Fee</u>	<u>\$ 3,100</u>	<u>3.3%</u>	<u>\$ 3,202</u>	<u>5 applications</u>	<u>\$ 16,010</u>
<u>Base Annual Fee</u>	<u>\$ 861</u>	<u>3.3%</u>	<u>\$ 889</u>	<u>134 private NTPs</u>	<u>\$ 119,126</u>
<u>Patient Slot Fee</u>	<u>\$ 27</u>	<u>3.3%</u>	<u>\$ 28</u>	<u>36,287 total patient slots</u>	<u>\$ 1,016,036</u>
<u>Program Relocation Fee</u>	<u>\$ 1,100</u>	<u>3.3%</u>	<u>\$ 1,136</u>	<u>1 relocation</u>	<u>\$ 1,136</u>
<u>Total Statewide License Fees – All Categories</u>					<u>\$1,152,308</u>
<u>Cost of Licensing Narcotic Treatment Programs</u>					<u>\$1,889,000</u>

The Department calculated license fees for FY 2006-2007 by multiplying the prior year's (FY 2004-2005) license fees by the annual increase (3.3%) in the Consumer Price Index, as published by the California Department of Finance and adding that amount to the prior year's fees.

NECESSITY: Needed to show that total fees do not exceed cost of licensing narcotic treatment programs (NTPs). The Department originally developed license fees for narcotic NTPs in 1983, based on the cost of licensing NTPs at that time. Although HSC 11839.7 requires the Department to set NTP license fees at a level sufficient to cover the annual cost of licensing NTPs, the Department last increased NTP license fees in FY 1994-1995. Since then, the Department supplemented NTP licensing costs with other Departmental funds. The cost of licensing NTPs has substantially increased since the fees were last increased in FY 1994-1995. For example, the cost of licensing NTPs for FY 2006-2007 is estimated to be \$1,889,000 (based on costs for FY 2005-2006), while the total revenue collected from licensing fees during FY 2004-05 was only \$1,152,308. HSC 11839.7 allows an increase equal to the Consumer Price Index plus 5% to cover the cost of licensing narcotic treatment programs. In order to minimize hardship on licensees, the Department is increasing NTP license fees for FY 2006-2007 by only the amount of CPI for FY 2004-2005 (3.3%), which was the most recent annual CPI available. The Department chose to use the rate of inflation as shown in the California Consumer Price Index published by the Department of Finance because it is published regularly and is reliable.

- (c) The Department shall calculate license fees for FY 2007-2008 and future years by multiplying the prior year's license fee by the increase, if any, in CPI plus five percent (5%), so long as total revenue from license fees does not exceed the cost of licensing narcotic treatment programs.

For example, if the most recent CPI were four percent (4%) and costs were \$1,889,000, license fees for the future fiscal year would be as shown below:

<u>Type of License Fee</u>	<u>Prior Year License Fees</u>	<u>Percent of increase (4% CPI + 5%)</u>	<u>New License Fees for Future Fiscal Year</u>	<u>Number of Estimated Transactions</u>	<u>Total Statewide License Fees for Future Fiscal Year</u>
<u>Initial Application for Licensure Fee</u>	<u>\$3,202</u>	<u>9%</u>	<u>\$3,490</u>	<u>5 applications</u>	<u>\$ 17,450</u>
<u>Base Annual License Fee</u>	<u>\$889</u>	<u>9%</u>	<u>\$969</u>	<u>134 private NTPs</u>	<u>\$ 129,846</u>
<u>Patient Slot Fee</u>	<u>\$28</u>	<u>9%</u>	<u>\$31</u>	<u>36,287 total patient slots</u>	<u>\$ 1,124,897</u>
<u>Program Relocation Fee</u>	<u>\$1,136</u>	<u>9%</u>	<u>\$1,238</u>	<u>1 relocation</u>	<u>\$ 1,238</u>
<u>Total Statewide License Fees – All Categories</u>					<u>\$1,273,431</u>
<u>Cost of Licensing Narcotic Treatment Programs</u>					<u>\$1,889,000</u>

NECESSITY: Needed to clarify how license fees will be determined for future years pursuant to HSC 11839.7 and to show that total fees would not exceed cost. The Department is using CPI plus 5% because license fees have not increased since FY 1994-1995. The cost of licensing NTPs is expected to exceed CPI for the foreseeable future. The Department has used the same estimated number of transactions in this example that it used in the chart for FY 2006-2007 because the number of applications, private NTPs, total patient slots, and relocations have historically remained about the same year to year.

- (d) No later than April 30 of each year, the Department shall calculate the annual license fee for the future fiscal year (July 1st through June 30th)
- (e) No later than April 30 of each year, following the effective date of this regulation, the Department shall give written notice to narcotic treatment program licensees of the license fees for the future fiscal year and the manner in which they were calculated, including data used in making the calculation.

NECESSITY: Needed so that licensees will know what license fee to pay.

- (f) Applicants for initial licensure or relocation shall include the required fee with their application for licensure or relocation.
- (1) The Department shall terminate review of the application if the applicant fails to include the required fee.

(2) The Department shall not refund the fee if it denies the application.

(3) Upon approval of the application for initial licensure, the Department shall send the licensee an invoice, stating the amount of the prorated base annual license fee and the slot fees due for the remainder of the fiscal year.

NECESSITY: To prevent hardship to applicants, first year's fees are not due until licensure is approved. (f)(3) added for clarity so that licensee knows what fees are due for the first year of licensure.

(g) In August of each year the Department shall send license renewal invoices to all licensees, stating the amount of the base annual license fee and slot fees due for the fiscal year.

NECESSITY: Needed for clarity so that licensees will know what fees are due for renewal of licensure.

(h) The licensee may pay annual license fees once annually or quarterly in arrears.

(1) If the licensee pays the total annual license fees once annually, he/she shall submit the amount of the total annual license fees in time to be received by the Department by September 30th of the same year.

(2) If the licensee pays the annual license fees quarterly in arrears, he/she shall submit one quarter of the total annual license fees in time to be received by the Department by September 30th, December 31st, March 31st, and May 31st of the same fiscal year.

(3) If the licensee fails to timely submit the annual license fees in accordance with the requirements of this subsection, the Department shall issue a written notice of deficiency within five (5) working days of the date payment was due. The notice of deficiency shall:

(A) Notify the licensee that he/she has failed to pay license fees in accordance with the requirements of this regulation;

(B) Specify the amount of the license fees due;

(C) State the date by which the license fees were due;

(D) Notify the licensee that his/her license shall not be renewed unless all license fees have been paid by May 31st of the same fiscal year;

(E) Notify the licensee that the Department shall assess a civil penalty in the amount of \$100 per day for each day from the date the license fees were due until the date the licensee pays the license fees; and

(F) Notify the licensee that he/she may appeal civil penalties in accordance with Section 10057.

NECESSITY: Needed to encourage timely payment of fees.

(4) If the Department fails to issue a written notice of deficiency within five (5) calendar days, the Department shall not assess the civil penalty until the date of the notice. Failure to issue a written notice of deficiency within five (5) calendar days shall not relieve the licensee of his/her obligation to pay license fees and shall not entitle the licensee to renewal of his/her license.

NECESSITY: Needed to clarify that late deficiency notice does not absolve the licensee of his/her responsibility to pay license fees.

NOTE: Authority cited: Sections 11755, 11835, 11839.3, and 11839.20, Health and Safety Code. Reference: Sections 11839.3 and 11839.7, Health and Safety Code.

ADOPT NEW SECTION 10057 AS SHOWN BELOW:

§ 10057. Administrative Review of Licensing Actions.

**DELETE ORIGINALLY PROPOSED TEXT SHOWN IN STRIKEOUT/UNDERLINE
AND REPLACE WITH NEW LANGUAGE SHOWN IN ITALIC UNDERLINE**

- ~~(a) Licensees and applicants for licensure may appeal a notice of licensing action by forwarding a written request for review to the Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. As used in this regulation, "licensing action" means any administrative action taken by the Department which would adversely affect licensure of an NTP, such as denial of an application, denial of a request for renewal of licensure, assessment of a civil penalty, or suspension or revocation of licensure.~~
- ~~(b) The written request for review shall be postmarked within fifteen (15) working days of receipt of the written notice of licensing action. The written request for review shall:
 - ~~(1) Identify the statute(s) or regulation(s) at issue and the legal basis for the licensee's appeal;~~
 - ~~(2) State the facts supporting the licensee's position; and~~
 - ~~(3) State whether the applicant for licensure or licensee waives an informal conference and prefers to proceed directly with an administrative hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code.~~~~
- ~~(c) Failure to submit the written request for review, pursuant to Subsection (b) of this regulation, shall be deemed a waiver of administrative review and the action shall be deemed final.~~
- ~~(d) Unless the licensee waived his/her right to informal conference, the Director or the Director's designee shall schedule an informal conference with the licensee, unless the Director or the Director's designee and the licensee agree to settle the matter based upon the information submitted with the request for review. The informal conference shall be scheduled within fifteen (15) days and held within forty-five (45) days of receipt of the request for review. If the licensee waived his/her right to informal conference, the Director or the Director's designee shall proceed in accordance with (l) of this regulation.~~
- ~~(e) Failure to schedule the informal conference within fifteen (15) working days or hold the informal conference within forty-five (45) days of the receipt of the request shall be deemed a withdrawal of the licensing action by the Department unless the licensee:~~

- ~~(1) — Fails to attend the conference as scheduled, in which case the appeal shall be considered withdrawn and the action shall be deemed final.~~
- ~~(2) — Waives the fifteen (15) or forty-five (45) working day requirement, or~~
- ~~(3) — Waives informal conference.~~
- ~~(f) — At the informal conference the licensee shall have the right to:~~
 - ~~(1) — Be represented by legal counsel.~~
 - ~~(2) — Present oral and written evidence.~~
 - ~~(3) — Explain any mitigating circumstances.~~
- ~~(g) — The representatives of the Department, who issued the notice of licensing action, shall attend the informal conference and present oral and/or written evidence and information in substantiation of the alleged violation.~~
- ~~(h) — The Department shall conduct the conference as an informal proceeding, rather than in the manner of a judicial hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code). The Department need not conduct the informal conference according to the technical rules relating to evidence and witnesses.~~
- ~~(i) — Neither the licensee nor the Department shall have the right to subpoena any witness to attend the informal conference. However, both the licensee and the Department may present witness(s) to present evidence and information on its behalf at the conference.~~
- ~~(j) — Either party at the informal conference may record the proceedings of the informal conference on audio tape.~~
- ~~(k) — The Director or his/her designee shall mail the decision to affirm, modify, or dismiss the notice of licensing action to the licensee, postmarked no later than ten (10) working days from the date of the informal conference. The decision shall specify the reason for affirming, modifying, or dismissing the notice of licensing action. A copy of the decision shall be transmitted to each party of the administrative review.~~
- ~~(l) — The decision from the informal conference shall include a statement from the Director or the Director's designee notifying the licensee of his/her right to further administrative appeal of the decision made at the informal conference. If the licensee is not satisfied with the decision of the informal conference, he/she may appeal the decision by requesting a formal administrative hearing in accordance with Chapter 5 (commencing with Section 11500) Part 1, Division 3, Title 2 of the Government Code.~~

- ~~(1) If the licensee wishes to appeal the decision of the informal conference, he/she shall submit a written request to the Director of the Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814, postmarked no later than fifteen (15) working days from the date of receipt by the applicant for licensure or licensee of the informal conference decision or the notice of licensing action, as appropriate. Upon receipt of the request for appeal, the Department shall initiate administrative review and request that the matter be set for hearing. The Department shall notify the licensee of the time and place of the hearing.~~
- ~~(2) Failure of the licensee to submit the written request for an administrative hearing as specified in (1)(1) immediately above shall be deemed a waiver of further administrative review and the decision of the Director or the Director's designee shall be deemed the final decision of the Department.~~
- ~~(3) In the event the licensee appeals the Department's proposed assessment of civil penalties, collection of the civil penalties shall be subject to the outcome of the final administrative appeal.~~
- ~~(4) A licensing action shall be deemed final if:~~
- ~~(A) The licensee fails to appeal the licensing action in a timely manner, pursuant to Subsections (c) and (m)(2) of this regulation; or~~
- ~~(B) A final determination is made in accordance with this regulation or, if applicable, with Section 11517 of the Government Code.~~
- ~~(5) After the licensing action is deemed final, the licensee shall pay any civil penalties to the Department within sixty (60) days of receipt of notice of final adjudication. Failure to pay the civil penalty within sixty (60) days of receipt of the notice of final adjudication shall result in revocation of the license pursuant to Section 10090.~~

NEW LANGUAGE PROPOSED AS ADDITIONAL CHANGE IS SHOWN BELOW:

- (a) "Licensing action" means any administrative action taken by the Department which would adversely affect the license of a Narcotic Treatment Program (NTP), including, but not limited to:*
- (1) Denial of an application for a license;*
- (2) Denial of a request for renewal or relocation;*
- (3) Assessment of a civil penalty; or*
- (4) Suspension or revocation of a license.*

NECESSITY: Needed to define licensing action.

- (b) Applicants and licensees may appeal a notice of licensing action by submitting a written request for administrative review to: Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814.
- (1) The request for administrative review shall be received by the Department no later than 20 calendar days from the date of the notice of licensing action. The request for administrative review shall:

 - (A) Identify the statute(s) or regulation(s) at issue and the legal basis for the applicant's or licensee's appeal;
 - (B) State the facts supporting the applicant's or licensee's position; and
 - (C) State whether the applicant or licensee waives an informal conference and requests to proceed with an administrative hearing conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code.
- (2) Failure to submit a written request for administrative review pursuant to this subsection shall be deemed a waiver of administrative hearing and the licensing action shall be final.

NECESSITY: Needed to establish the criteria and timeline for initiating an administrative review and the reason for the request for review. Twenty days was chosen to allow time for mailing of the request. In addition, it is necessary to establish that the licensing action is final if the licensee fails to submit a request for review in a timely manner.

- (c) The first level of review for a licensing action shall be an informal conference. The Department need not conduct the informal conference in the manner of a judicial hearing pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code). The Department need not conduct the informal conference according to the technical rules relating to evidence and witnesses.
- (1) Within 15 working days of receipt of the request for administrative review, the Deputy Director in charge of the Licensing and Certification Division or the Deputy Director's designee shall schedule an informal conference with the applicant or licensee, and the informal conference shall be held within 45 working days of receipt of the request for administrative review, unless:

 - (A) The Department and the applicant or licensee agree to settle the matter; or
 - (B) The applicant or licensee waives the 15- or 45-day requirements

for setting and holding the informal conference; or

(C) The applicant or licensee, waives the informal conference; or

(D) The Department or the applicant or licensee provides to the other party written substantiation of the cause for a delay.

(3) Failure of the applicant or licensee to appear at the informal conference constitutes a withdrawal of the appeal and the licensing action shall be final, unless the informal conference is waived in writing pursuant to (c)(1)(B) or (C).

(4) The representative(s) of the Department who issued the notice of licensing action may attend the informal conference and present oral or written information in substantiation of the alleged violation or the Department's position may be presented in the notice of licensing action.

(5) At the informal conference the applicant or licensee shall have the right to:

(A) Representation by legal counsel.

(B) Present oral and written information.

(C) Explain any mitigating circumstances.

(6) No party to the action shall have the right to discovery at the informal conference. However, witness(es) shall be allowed to attend and present testimony under oath.

(7) Either party may record the proceedings of the informal conference on audio tape.

(8) At the applicant or licensee's request, the informal conference may be held in person, at a location specified by the Department, by telephone, by submission of a written position statement, or in any other manner agreed to by both parties.

NECESSITY: Needed to resolve administrative reviews informally in a timely manner. Establishes the process for conducting the first level of review

(d) No later than 10 working days from the date of the informal conference, the Department shall mail the decision to affirm, modify, or dismiss the notice of licensing action to the applicant or licensee.

(1) The decision shall give notice to the applicant or licensee of his/her right to an administrative hearing and the time period in which to

make such a request.

(2) A copy of the decision shall be transmitted to each party.

NECESSITY: Needed so that the licensee will be notified of the decision of the informal conference and may request an administrative hearing if he/she disputes the decision of the informal conference. Ten days chosen as reasonable time to allow for decision to be mailed

(e) The second level of review for a licensing action shall be an administrative hearing conducted pursuant to Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

(1) An applicant or licensee may request an administrative hearing only if:

(A) The applicant or licensee waives the informal conference and requests an administrative hearing pursuant to the provisions set forth in subsection (b) of this regulation, or

(B) The applicant or licensee timely requests an administrative hearing as specified in subsection (e)(2)(A) of this regulation.

(2) The applicant or licensee may request an administrative hearing by submitting a request in writing to: Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814.

(A) The request for administrative hearing shall be received by the Department no later than 20 calendar days from the date of the decision of the informal conference or the date of the notice of the licensing action if the applicant or licensee waives the informal conference.

(B) Failure of the applicant or licensee to request an administrative hearing pursuant to subsection (e)(2)(A) of this regulation shall be a waiver of the right to a hearing and the licensing action shall be final.

(3) Upon receipt of the request for administrative hearing, the Department shall issue an Accusation or Statement of Issues and request that the matter be set for hearing.

NECESSITY: Needed to provide due process by offering a formal review by an objective party

(f) A licensing action shall be final when:

- (1) The applicant or licensee fails to appeal the licensing action in a timely manner, pursuant to subsections (b) and (e) of this regulation; or
- (2) A final determination is made in accordance with Section 11517 of the Government Code; or
- (3) The parties have agreed in writing to a resolution of the matter.

NECESSITY: Needed to clarify when decision of appeal is final

(g) In the event an applicant or licensee appeals the Department's assessment of a civil penalty, collection of any civil penalty shall be stayed until the final action on the licensing appeal. When the licensing action is final, the applicant or licensee shall pay all civil penalties to the Department within 60 calendar days of receipt of mailing of final adjudication. The civil penalties shall bear interest at the legal rate of interest from the date of notice of final adjudication until paid in full. Failure to pay the civil penalty and accrued interest within 60 calendar days of the notice of final adjudication shall result in one or more of the following sanctions:

- (1) Denial of an application for a license;
- (2) Denial of an application for renewal of a license;
- (3) Suspension or revocation of a license.

NECESSITY: Needed to provide due process; collection of civil penalty delayed until final adjudication so that Department will not have to refund penalties in the event that the appeal is resolved in the licensee's favor. Sixty days determined to be a reasonable time to pay civil penalties. Time limit needed to encourage timely payment of civil penalties.

NOTE: Authority cited: Sections 11755, 11835, 11839.3, and 11839.20, Health and Safety Code. Reference: Section 11839.3, Health and Safety Code; and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code.